

NO. 4:15-CV-30-FL

Defendant.

$$\begin{array}{c} ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \\ ) \end{array}$$

with public sale to occur Monday, February 23, 2015. See id. (Amended Notice of Foreclosure Sale, Jan. 26, 2015).

## **DISCUSSION**

Temporary restraining orders are governed by Rule 65 of the Federal Rules of Civil Procedure, which provides that a temporary restraining order shall not issue in the absence of “specific facts . . . [which] clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). In addition, the Rule requires “the movant’s attorney certif[y] in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1)(B). The movant must establish the following to obtain a temporary restraining order or a preliminary injunction: (1) that he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

As an initial matter, plaintiff has failed to comply with the requirements established by the Rule. In particular, plaintiff has failed to provide a description of the efforts made to contact defendant, or why such efforts should not be required. This omission is particularly suspect as plaintiff alleges he received notice on January 25, 2015.


In any event, plaintiff is unlikely to succeed on the merits, where plaintiff admits he stopped making payments on the note in or around February 2014, and where plaintiff in effect seeks to nullify in this court the state court’s findings authorizing foreclosure to proceed. Plaintiff also has failed to establish that any immediate and irreparable harm will occur, where the upset bid period

prohibits the foreclosure sale from becoming final for, at minimum, 10 days. See N.C. Gen. Stat. § 45-21.27.

### **CONCLUSION**

Based on the foregoing, plaintiff's motion for a temporary restraining order is DENIED. (DE 3). The court HOLDS IN ABEYANCE plaintiff's motion for preliminary injunction, until proof of service on defendant is made.

SO ORDERED, this the 20th day of February, 2015.

A handwritten signature in black ink, reading "Louise W. Flanagan", is positioned above a horizontal line.

LOUISE W. FLANAGAN  
United States District Judge